

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

CASE NO. 1:22-cv-00489

REBECCA DAY, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

TRACTOR SUPPLY COMPANY,

Defendant.

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**DEFENDANT’S NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendant, Tractor Supply Company (“Defendant” or “TSC”), by and through its attorneys Akerman, LLP, respectfully submits this Notice of Supplemental Authority to bring to the Court’s attention a letter from the Department of Labor dated September 30, 2019 (“DOL Letter”), attached herewith as **Exhibit A**. TSC was unable to locate a copy of the DOL Letter when TSC filed its Motion to Dismiss (the “Motion”) [ECF No. 11-1] and Reply [ECF 17] due to a change in TSC’s personnel, but was able to locate a copy as of October 24, 2022. The DOL Letter is relevant because the Complaint and the Motion state that TSC received authorization from the New York Department of Labor Commissioner to pay its manual employees on a bi-weekly basis as of September 17, 2019. *See* Compl. ¶; *see also* Mot. at 15. There is no dispute in this case as to whether Defendant is authorized to pay its manual employees on a bi-weekly basis under New York Labor Law § 191 as evidenced by the Department of Labor’s public records and the DOL Letter attached.

The DOL Letter shows that the Commissioner provided authorization to TSC after it carefully reviewed material submitted for the three years preceding TSC’s 2019 application and

found that TSC “[had] furnished sufficient proof that it met and [will] continue to meet its payroll responsibilities, and [had] furnished other information and proof in accordance with the conditions set forth under Section 191.1a(ii).” *See* DOL Letter. Defendant’s position in the Motion and Reply is that TSC is not in violation of Section 191 and plaintiff and the putative class cannot pursue a private cause of action under Section 191 and recover liquidated damages *after* the Commissioner has reviewed TSC’s pay practices covering the same relevant period and granted authorization to TSC.

Dated: October 25, 2022

Respectfully submitted,

**AKERMAN LLP**

By: */s/ Jeffrey A. Kimmel*

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